

NOV 7 1977

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

Nos. 77-406 and 77-434

No. 77-406

**THE PEOPLE OF THE STATE OF CALIFORNIA and
THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA, *Petitioners,***

v.

**FEDERAL COMMUNICATIONS COMMISSION and
THE UNITED STATES OF AMERICA, *et al., Respondents.***

No. 77-434

**THE NATIONAL ASSOCIATION OF REGULATORY UTILITY
COMMISSIONERS, *Petitioner,***

v.

**FEDERAL COMMUNICATIONS COMMISSION and
THE UNITED STATES OF AMERICA, *et al., Respondents.***

**On Petitions for a Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit**

**BRIEF IN OPPOSITION FOR RESPONDENT
AERONAUTICAL RADIO, INC.**

**CHARLES R. CUTLER
JOHN L. BARTLETT
JACK D. SIDOROV
KIRKLAND, ELLIS & ROWE
1776 K Street, N.W.
Washington, D.C.**

***Attorneys for Aeronautical
Radio, Inc.***

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

Nos. 77-406 and 77-434

No. 77-406

THE PEOPLE OF THE STATE OF CALIFORNIA and
THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA, *Petitioners*,

v.

FEDERAL COMMUNICATIONS COMMISSION and
THE UNITED STATES OF AMERICA, *et al.*, *Respondents*.

No. 77-434

THE NATIONAL ASSOCIATION OF REGULATORY UTILITY
COMMISSIONERS, *Petitioner*,

v.

FEDERAL COMMUNICATIONS COMMISSION and
THE UNITED STATES OF AMERICA, *et al.*, *Respondents*.

On Petitions for a Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit

**BRIEF IN OPPOSITION FOR RESPONDENT
AERONAUTICAL RADIO, INC.**

OPINIONS BELOW

The decision of the Court of Appeals (Pet. App. 1-15)¹ is not yet reported. The Court of Appeals affirmed the decision of the Federal Communications Commission (FCC) (Pet. App. 16-44) which is reported at 56 F.C.C.2d 14 (1975).

JURISDICTION

Petitioners seek review by this Court pursuant to 28 U.S.C. § 1524.

QUESTION PRESENTED

Whether the Federal Communications Commission possesses the statutory authority to regulate facilities located within one state which are used to provide both interstate and intrastate communications, where the FCC concludes that it is clearly not in the public interest and technically impracticable to require duplicative facilities to separate interstate from intrastate communications functions.

STATEMENT

Aeronautical Radio, Inc. (ARINC) was formed in 1929 by the airline industry at the suggestion of the Federal Radio Commission (the predecessor of the Federal Communications Commission) for the purpose of promoting the safety of flight by coordinating and assuring effective communications for the air transport industry. In furtherance of this objective, ARINC obtains from the various communications common carriers a complex, nationwide network of

¹ "Pet. App." refers to "Petitioners' Joint Appendices."

private line facilities,² including the CCSA network³ used to support the operations of American Airlines at issue in this proceeding.

As the customer for the disputed circuit, ARINC is vitally affected by any action which may lessen its ability to obtain the interstate communications services it requires. Nonetheless, rather than detail the procedural history of this case, ARINC adopts the Statements appearing in the Brief of the Federal Communications Commission and the United States of America in Opposition (Government Brief) and the Brief for Respondent Southern Pacific Communications Company in Opposition (SPCC Brief). In addition, ARINC wishes to supplement those Statements with a description of ARINC's communications services on behalf of the entire air transport industry and the critical need of that industry for an integrated, nationwide communications system essential to the safety, regularity and economy of modern air transportation.

Perhaps more than any other sector of the nation's economy, the air transport industry demands extensive and specialized communications systems to meet its unique requirements. Today, the safe and efficient movement of high-speed aircraft, and the passengers and cargo they carry, depends upon complex, nation-

² A map depicting the point-to-point private line requirements of the air transport industry supplied through ARINC's Private Line Intercity Network (PLIN) is shown in the Addendum *infra*.

³ Common Control Switching Arrangement is a private line switching arrangement available from the Bell System which provides a customer with an integrated communications network linking such offices or other locations throughout the country as the customer may desire.

wide networks of dedicated private line services and sophisticated computer and communications facilities.

The air transport industry uses a vast nationwide array of both public and private line communications channels to link together aircraft on the ground and in flight, administrative offices, ticket counters, computer centers, maintenance bases, and parts depots. While ARINC thus provides a wide range of aeronautical communications services necessary to meet the industry's requirements, those most relevant to the pending proceeding are the networks of interconnected private line circuits leased by ARINC from communications common carriers, including American Telephone and Telegraph Company (AT&T) and SPCC. Indeed, ARINC is today the *largest* private customer of AT&T for such interstate private line services, and is also a substantial customer of the various specialized common carriers, with the matrix of private line circuits used by the airline industry consisting of almost 5 million circuit-miles, linking together some 3,400 city pairs across the nation. ARINC processes an average of 1,000 to 1,200 changes in this vast system each month.

In connection with its complex private line networks, the aviation community is also a major user of a specific type of private line communications service—"foreign exchange" or "FX" service. Essentially, FX private line service permits an individual situated outside of a particular local exchange area to obtain exchange telephone service in that area just as if his telephone were actually located there.

Like all private line services, FX service is fundamentally distinct from the public Message Telephone

Service (MTS) which the telephone companies provide to their ordinary subscribers.⁴ Under MTS, all calls beyond the local exchange area are metered separately and subject to an individual toll charge above and beyond the rate set for local service. While FX private line service, by definition, involves message traffic beyond the confines of a single exchange area, the FX customer pays a single flat rate covering the cost of the dedicated private line, irrespective of whether he makes or receives one, none, or many calls (up to the technical capacity of the line) during the billing period.

The nation's airline industry is utterly dependent upon FX private line services integrated into its networks of private line circuits. While but one of many possible examples, the indispensable role played by such FX service is perhaps best illustrated by the intricate and complex reservations/information systems maintained by major air carriers today.

Such systems are based upon an extensive network of FX lines which funnel reservation calls and requests for information into either a limited number of regional or a single centralized reservation center. An individual can call a local telephone number in the town or city where he lives and, through the network of FX and other private lines, may actually speak with an agent at a central reservations center a thousand miles away. To the individual, however, the phone call he made was only a local one, with no additional toll charges.

⁴ The Third Circuit has found that private line services include FX and CCSA. *Bell Telephone Co. of Pennsylvania v. FCC*, 503 F.2d 1250 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975).

At the reservations center, incoming calls are automatically and efficiently distributed among a number of available agents. This creates obvious economies in agent utilization and assures that people throughout the nation, even in smaller communities, are able to contact the airlines to secure space or information concerning flights.

Some airlines also balance reservations traffic at peak times between various regional centers, both nearby and across the continent, to assure the best service to the public. By this technique, calls which would ordinarily go to one reservation center are automatically switched to another regional center over private lines when all agents are busy at the first center. Thus, a message which at one point in time might not cross a state line, may very well be an interstate transmission just a few minutes later.

In addition to public convenience, the reservations systems also play an important role in the safety and economy of aircraft operations. Because the system permits optimum utilization of equipment, the associated costs of operation can be held at a minimum. Also, the data stored in the reservations computers are used by air carriers for vital aircraft weight, balance, and fuel requirement calculations, as well as for crew scheduling.

Another example of the industry's need for integrated FX service—and one of particular significance to this case—is the private line CCSA communications networks maintained by several airlines for administrative purposes. The nationwide operations of many carriers make efficient intercommunication among company personnel of paramount concern. While

routinely employed for general administration, these are the same facilities used during extreme emergencies, such as aircraft accidents or hijackings, to coordinate the activities of the carrier, other airlines, the FAA, and other agencies. Significantly, the California circuit involved in the Commission Order affirmed below was ordered from SPCC for use by American Airlines in order to extend just such a multistate administrative CCSA network from Los Angeles to San Diego.

The special communications requirements of the air transport industry involve an immense and ever-changing combination of FX, CCSA and other private line services. And since San Diego is only one hour and fifty-five minutes from Denver by scheduled airline and Tulsa is less than three hours from New York City, airline communications management can be handled only on a national and regional basis to assure that overall operations are integrated to the fullest extent practicable. Clearly, consistent and uniform national policies governing interstate private line communications networks are essential to the planning and development of airline communications systems upon which the safety, regularity and economy of modern air transportation depend.

ARGUMENT

ARINC adopts and hereby incorporates and consolidates the Argument appearing in the Government Brief and the Argument appearing in the SPCC Brief. As is shown in the Government Brief and the SPCC Brief, there are no special and important reasons for review by this Court, and none of the factors identi-

fied in Supreme Court Rule 19(1)(b) for federal court of appeals cases meriting review on certiorari are presented here.

ARINC wishes to reiterate that this case presents no important and unsettled question of federal law, and that the decision below not only is not in conflict with, but rather is a direct lineal descendant of, the decisions of other courts of appeals. Two decisions of the Fourth Circuit⁵ have, after careful consideration, affirmed the FCC's jurisdiction over facilities which are used in both interstate and intrastate communications. The same conclusion has been reached by the First Circuit⁶ and by the only state court which has squarely considered the issue.⁷ The decision below is also entirely consistent with the decision of the Third Circuit affirming the FCC's requirement that the established carriers must provide interconnection of FX and CCSA facilities.⁸

This Court has denied certiorari in both Fourth Circuit cases.⁹ Petitioners have failed to adduce any meaningful distinction between this case and those

⁵ North Carolina Utilities Commission v. FCC, 552 F.2d 1036 (4th Cir.), *cert. denied*, 46 U.S.L.W. 3190 (Oct. 3, 1977) (North Carolina II); North Carolina Utilities Commission v. FCC, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976) (North Carolina I).

⁶ Puerto Rico Telephone Co. v. FCC, 553 F.2d 694 (1st Cir. 1977).

⁷ Sherdon v. Dann, 193 Neb. 768, 229 N.W.2d 531 (1975).

⁸ Bell Telephone Co. of Pennsylvania v. FCC, 503 F.2d 1250 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975).

⁹ North Carolina I and II, *supra* note 5.

and have failed to suggest any change in circumstances which make certiorari more appropriate now.

CONCLUSION

For the above reasons, certiorari should be denied.

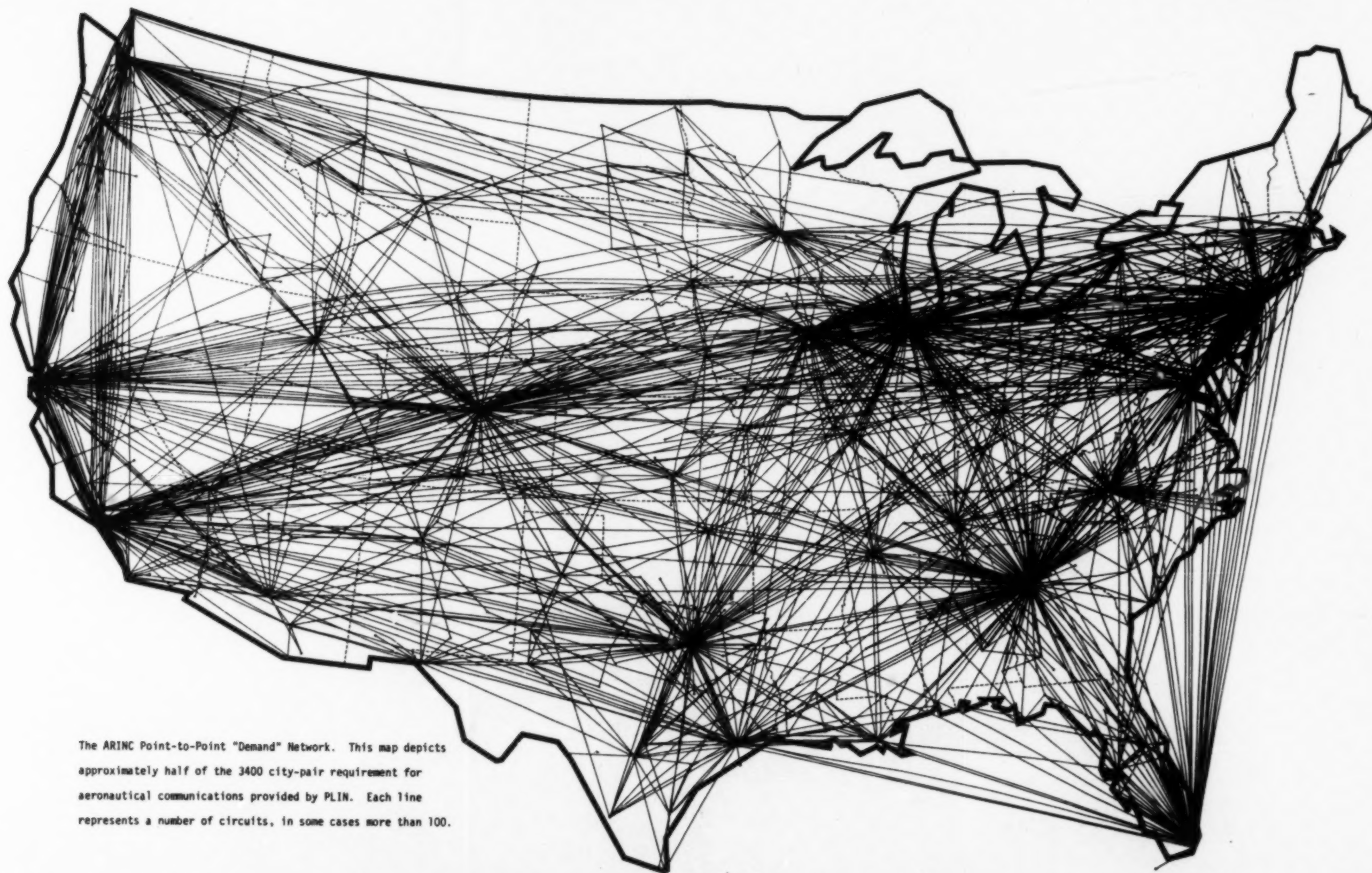
Respectfully submitted,

CHARLES R. CUTLER
JOHN L. BARTLETT
JACK D. SIDOROV
KIRKLAND, ELLIS & ROWE
1776 K Street, N.W.
Washington, D.C.

*Attorneys for Aeronautical
Radio, Inc.*

November 7, 1977

ADDENDUM



The ARINC Point-to-Point "Demand" Network. This map depicts approximately half of the 3400 city-pair requirement for aeronautical communications provided by PLIN. Each line represents a number of circuits, in some cases more than 100.